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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 MARTIN VOGEL,

14 Plaintiff,

15 vs.

16 WINCHELL'S DONUT HOUSES
17 OPERATING COMPANY, LP,
18

19 Defendant.
20

} No.

} **Plaintiff's Complaint**

I. SUMMARY

1. This is a civil rights action by plaintiff Martin Vogel (referred to hereinafter as “Vogel”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Pizza Hut
11006 Rosecrans Avenue
Norwalk, CA 90650
(referred to hereinafter as “the Restaurant”)

2. Vogel seeks damages, injunctive and declaratory relief, attorney fees and costs against Winchell's Donut Houses Operating Company, LP (referred to hereinafter as “Winchell's Donut Houses”) pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Vogel’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Central District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Winchell's Donut Houses owns, operates, and/or leases the Restaurant, and consists of a person (or persons), firm, and/or corporation.

1 himself). He continues to be deterred from visiting the Restaurant because of the
2 future threats of injury created by these barriers.

3 12. Vogel also encountered barriers at the Restaurant, which violate state
4 and federal law, but were unrelated to his disability. Nothing within this
5 complaint, however, should be construed as an allegation that Vogel is seeking to
6 remove barriers unrelated to his disability.

7 13. Winchell's Donut Houses knew that these elements and areas of the
8 Restaurant were inaccessible, violate state and federal law, and interfere with (or
9 deny) access to the physically disabled. Moreover, Winchell's Donut Houses has
10 the financial resources to remove these barriers from the Restaurant (without
11 much difficulty or expense), and make the Restaurant accessible to the physically
12 disabled. To date, however, Winchell's Donut Houses refuses to either remove
13 those barriers or seek an unreasonable hardship exemption to excuse non-
14 compliance.

15 14. At all relevant times, Winchell's Donut Houses has possessed and
16 enjoyed sufficient control and authority to modify the Restaurant to remove
17 impediments to wheelchair access and to comply with the Americans with
18 Disabilities Act Accessibility Guidelines and Title 24 regulations. Winchell's
19 Donut Houses has not removed such impediments and has not modified the
20 Restaurant to conform to accessibility standards.

21 VI. FIRST CLAIM

22 **Americans with Disabilities Act of 1990**

23 Denial of "Full and Equal" Enjoyment and Use

24 15. Vogel incorporates the allegations contained in paragraphs 1 through
25 15 for this claim.

26 16. Title III of the ADA holds as a "general rule" that no individual shall
27 be discriminated against on the basis of disability in the full and equal enjoyment
28 (or use) of goods, services, facilities, privileges, and accommodations offered by

1 any person who owns, operates, or leases a place of public accommodation. 42
2 U.S.C. § 12182(a).

3 17. Winchell's Donut Houses discriminated against Vogel by denying
4 “full and equal enjoyment” and use of the goods, services, facilities, privileges or
5 accommodations of the Restaurant during each visit and each incident of
6 deterrence.

7 Failure to Remove Architectural Barriers in an Existing Facility

8 18. The ADA specifically prohibits failing to remove architectural
9 barriers, which are structural in nature, in existing facilities where such removal
10 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
11 achievable” is defined as “easily accomplishable and able to be carried out without
12 much difficulty or expense.” *Id.* § 12181(9).

13 19. When an entity can demonstrate that removal of a barrier is not
14 readily achievable, a failure to make goods, services, facilities, or
15 accommodations available through alternative methods is also specifically
16 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

17 20. Here, Vogel alleges that Winchell's Donut Houses can easily remove
18 the architectural barriers at Restaurant without much difficulty or expense, and
19 that Winchell's Donut Houses violated the ADA by failing to remove those
20 barriers, when it was readily achievable to do so.

21 21. In the alternative, if it was not “readily achievable” for Winchell's
22 Donut Houses to remove the Restaurant’s barriers, then Winchell's Donut Houses
23 violated the ADA by failing to make the required services available through
24 alternative methods, which are readily achievable.

25 Failure to Design and Construct an Accessible Facility

26 22. On information and belief, the Restaurant was designed or
27 constructed (or both) after January 26, 1992—independently triggering access
28 requirements under Title III of the ADA.

23. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

24. Here, Winchell's Donut Houses violated the ADA by designing or constructing (or both) the Restaurant in a manner that was not readily accessible to the physically disabled public—including Vogel—when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

25. On information and belief, the Restaurant was modified after January 26, 1992, independently triggering access requirements under the ADA.

26. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

27. Here, Winchell's Donut Houses altered the Restaurant in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Vogel—to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

28. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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1 and, therefore, infringed upon or violated (or both) Vogel's rights under the
2 Disabled Persons Act.

3 37. For each offense of the Disabled Persons Act, Vogel seeks actual
4 damages (both general and special damages), statutory minimum damages of one
5 thousand dollars (\$1,000), declaratory relief, and any other remedy available
6 under California Civil Code § 54.3.

7 38. He also seeks to enjoin Winchell's Donut Houses from violating the
8 Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover
9 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and
10 55.

11 VIII. THIRD CLAIM

12 **Unruh Civil Rights Act**

13 39. Vogel incorporates the allegations contained in paragraphs 1 through
14 30 for this claim.

15 40. California Civil Code § 51 states, in part, that: All persons within the
16 jurisdiction of this state are entitled to the full and equal accommodations,
17 advantages, facilities, privileges, or services in all business establishments of
18 every kind whatsoever.

19 41. California Civil Code § 51.5 also states, in part, that: No business
20 establishment of any kind whatsoever shall discriminate against any person in this
21 state because of the disability of the person.

22 42. California Civil Code § 51(f) specifically incorporates (by reference)
23 an individual's rights under the ADA into the Unruh Act.

24 43. Winchell's Donut Houses' aforementioned acts and omissions denied
25 the physically disabled public—including Vogel—full and equal
26 accommodations, advantages, facilities, privileges and services in a business
27 establishment (because of their physical disability).
28

X. PRAYER FOR RELIEF

WHEREFORE, Vogel prays judgment against Winchell's Donut Houses for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

2. Declaratory relief that Winchell's Donut Houses violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

4. Attorneys' fees, litigation expenses, and costs of suit.²

5. Interest at the legal rate from the date of the filing of this action.

DATED: January 15, 2016 DISABLED ADVOCACY GROUP, APLC

/s/ Scottlynn J Hubbard IV

SCOTTLYNN J HUBBARD IV

Attorney for Plaintiff

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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